

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

INNOVATION VENTURES, LLC D/B/A	§	
LIVING ESSENTIALS,	§	
	§	
Plaintiff,	§	CIVIL ACTION NO. 4:08-CV-232
	§	
v.	§	
	§	
ULTIMATE LIFESTYLES, LLC, ET AL,	§	
	§	
	§	
Defendants.	§	

**CONSENT JUDGMENT FOR PERMANENT INJUNCTION
AND FINAL ORDER RESOLVING ALL REMAINING CLAIMS**

Plaintiff Innovation Ventures, LLC d/b/a Living Essentials ("LE"), and Defendants Ultimate Lifestyles, LLC ("UL"), Custom Nutrition Laboratories, LLC ("CNL"), Alan Jones, and Mike Norwood have reached a settlement of each of their respective claims and defenses raised in this lawsuit and, pursuant to the terms of the Settlement Agreement entered between them, stipulate to the entry of this Order.

Defendants admit, acknowledge and agree to the following stipulated facts:

1. Plaintiff is and has been engaged in the development, advertising, distribution, marketing and sale of, among other products, two-fluid-ounce liquid energy shots bearing the name "5 Hour Energy" and/or "5-hour Energy" (without reference to capitalization, word order, or punctuation) ("5HE"), throughout the United States and Canada. Plaintiff Living Essentials has extensively advertised, and caused to be advertised, throughout the United States and Canada the trademark "5 Hour Energy" (the "Mark"). In addition, Plaintiff has a federally registered copyright in the 5 Hour Energy label's caution warning (Registration No. TX-6-833-514) and in

the 5 Hour Energy label itself.

2. Plaintiff, for many years, has been in the business of developing, advertising, distributing, marketing and selling 5HE. The Mark appears on cartons and labels for 5HE and Plaintiff was the first to adopt and use, or cause to be used, the Mark on or in association with 5HE and is recognized as the owner of the Mark.

3. As a result of marketing 5HE for many years under the Mark owned by LE, and the widespread recognition thereof by the public, the Mark 5HE has obtained secondary meaning and come to be, and now is, well and favorably known to the public as a product of high quality.

4. Defendants wrongfully, and without LE's knowledge or consent, manufactured, produced, distributed, sold, or offered for sale products, and, without LE's authority, used the Mark in manufacturing, offering to sell, and/or selling through unauthorized channels, such products that appear nearly identical to LE's legitimate product (the "Unauthorized Goods"). The Unauthorized Goods, by being manufactured, offered for sale, and/or sold through unauthorized channels bearing the Mark and packaged in nearly identical packaging, were held or caused to be held out to the public and retailers as being authorized by, approved by, affiliated with, or otherwise connected with the sale of LE's 5HE.

5. Defendants' wrongful activities described above led to the July 8, 2008 Report and Recommendation of Magistrate Judge Bush, which was adopted by Judge Schneider, and which resulted in the Court's issuance of the August 14, 2008 Preliminary Injunction Order (the "Preliminary Injunction"). The parties agree that this Preliminary Injunction shall be converted to a permanent injunction. The parties further agree that the Report and Recommendations of Magistrate Judge Bush Regarding Plaintiff's Application for Second Preliminary Injunction, dated March 13, 2009, as well as the May 27, 2009 Order of the Court adopting that Report and

Recommendation, including, without limitation, those portions of the Report and Recommendation relating to the non-compete provisions of the January 29, 2007 Manufacturing Agreement between LE and CNL, shall be vacated.

6. Plaintiff has valid, enforceable federally registered copyrights in the 5 Hour Energy caution statement and caution label.

7. LE or its assigns solely owns, and has always solely owned, the Formula (as defined below) and all derivatives and versions of the Formula, as well as any and all trade secret and intellectual property rights in and to the Formula.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

- (1) CNL, and all of its predecessors, heirs, affiliates (including, without limitation, Custom Nutrition Laboratories, Inc., Nutritional Holdings, LLC and Rock On Energy, LLC), successors, branches, divisions, parents (including, without limitation, Nutritional Holdings, LLC), subsidiaries, assigns, and its present and former members, managers, managing members, shareholders, officers (including, without limitation, Alan Jones and Paul Stewart), employees of all such entities, and each of them (collectively, the "CNL Parties"), and any and all persons in active concert or participation with all or any CNL Parties, shall be and are hereby permanently restrained, and are ordered to immediately cease and desist, directly or indirectly, manufacturing, distributing, selling, offering to sell, marketing, transferring, disposing of, commingling, or attempting to do any of the foregoing with respect to, any goods bearing the trademarks "5 Hour Energy" or "5-hour Energy" (without reference to capitalization, word order, or punctuation), or any liquid product stating or suggestion a specific number of hours of energy on the label (name, statement, or reference) or having a reference to a specific number of hours of energy on

- the label, or any goods stating that such goods were distributed or authorized by LE; and
- (2) UL and all of its predecessors, heirs, affiliates, successors, branches, divisions, parents, subsidiaries, assigns, and its present and former members, managers, managing members, shareholders, officers (including, without limitation, Mike Norwood), employees of all such entities, and each of them (collectively, the "UL Parties"), and any and all persons in active concert or participation with all or any UL Parties, shall be and are hereby permanently restrained, and are ordered to immediately cease and desist, directly or indirectly, manufacturing, distributing, selling, offering to sell, marketing, transferring, disposing of, commingling, or attempting to do any of the foregoing with respect to, any goods bearing the trademarks "5 Hour Energy" or "5-hour Energy" (without reference to capitalization, word order, or punctuation), or any liquid product stating or suggestion a specific number of hours of energy on the label (name, statement, or reference) or having a reference to a specific number of hours of energy on the label, or any goods stating that such goods were distributed or authorized by LE; and
- (3) Except with the express, prior authorization in writing by LE, the CNL Parties, and any and all persons in active concert or participation with all or any CNL Parties, shall be and are hereby permanently restrained, and are ordered to immediately cease and desist, directly or indirectly, producing, manufacturing, selling, or offering to sell (a) 5HE, and/or (b) any product containing the formula, recipe, and/or composition, now or in the past, of or for 5HE, in any and all forms, flavors, derivations or origins from the beginning of time to and through the present (the "Formula"), and/or (c) the Formula.
- (4) Except with the express, prior authorization in writing by LE, the UL Parties, and any and all persons in active concert or participation with all or any UL Parties, shall be and

are hereby permanently restrained, and are ordered to immediately cease and desist, directly or indirectly, producing, manufacturing, selling, or offering to sell (a) 5HE, and/or (b) any product containing the Formula for 5HE, and/or (c) the Formula.

- (5) The CNL Parties and the UL Parties, and any and all persons in active concert or participation with them, shall be and are hereby permanently restrained, and are ordered to immediately cease and desist from using LE's copyrighted work or any substantial portions thereof.
- (6) The Report and Recommendations of Magistrate Judge Bush Regarding Plaintiff's Application for Second Preliminary Injunction, dated March 13, 2009, as well as the May 27, 2009 Order of the Court adopting that Report and Recommendation, including, without limitation, those portions of the Report and Recommendation relating to the non-compete provisions of the January 29, 2007 Manufacturing Agreement between LE and CNL, are hereby vacated.
- (7) Any and all documents filed under seal in this lawsuit shall remain sealed, and shall not be released without the prior written consent of LE; and
- (8) All claims and counterclaims asserted herein are hereby DISMISSED WITH PREJUDICE. All other provisions of this Consent Judgment are and remain in full force and effect.

SIGNED this 27th day of August, 2009.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE

STIPULATED AND AGREED TO BY:

Dated: August 17, 2009

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Dated: August 17, 2009

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